

BILLING AND REFUND NOTICESTATE OF CALIFORNIA
BOARD OF EQUALIZATIONP.O. BOX 942879 SACRAMENTO, CALIFORNIA 94279-0001
VAN NUYS DISTRICT (818) 904-2300

FOR BOE USE ONLY		
RE	PM	
EFFECTIVE DATE OF PAYMENT		
MO	DAY	YEAR

Account: [REDACTED] 58

Express Login Code: [REDACTED]

✓ JESSE W. MCCLELLAN
8928 VOLUNTEER LN STE 200
SACRAMENTO CA 95826-3238

Notice ID: [REDACTED]	June 26, 2014
Amount Due	626,873.37
Amount enclosed	
Additional charges are due if not paid by 06/30/14 (See instructions below)	
	8

Copy of Notice issued to:

**** STATEMENT OF LIABILITY BALANCES ****

This statement reflects only those liabilities detailed below. It is not intended to represent all liabilities you may owe the Board.

Sales and Use Taxes
SALES TAX REGULAR

TAX

Interest

Penalty

Total

DETERMINATION ISSUED 08/14/12

As determined by Audit

For the Period 10/01/04-12/31/07

PETITIONED

Revenue	351,054.35			351,054.35
Interest 02/01/05-08/31/12		177,775.73		177,775.73
Payment 03/15/08	-10,000.00			-10,000.00
Payment 05/07/08	-8,000.00			-8,000.00
Payment 06/30/08	-2,915.37			-2,915.37
Penalty			87,763.64	87,763.64
Interest 09/01/12-10/31/12		3,298.38		3,298.38
Interest 09/01/12-11/30/12		4.50		4.50
Interest 10/12/12-01/31/13		4,950.57		4,950.57
Payment 01/07/13	-96.00			-96.00
Interest 02/01/13-09/30/13		13,201.68		13,201.68
Payment 09/11/13	-382.50			-382.50
Payment 09/30/13	-4,417.50			-4,417.50
Interest 10/01/13-04/30/14		11,383.47		11,383.47
Interest 05/01/14-06/30/14		3,252.42		3,252.42
Subtotal	325,242.98	213,866.75	87,763.64	626,873.37

BALANCE

626,873.37

Additional interest will accrue in accordance with the Revenue and Taxation Code section 6591 on the unpaid TAX at the rate of 0.500 % per month. Interest of 1,626.21 will accrue if the TAX is not paid on or before 06/30/14.

Payments can be made online by going to www.boe.ca.gov and selecting the Make a Payment tab.

If you are paying by check, write your account number and Notice ID, shown above, on the check and include a copy of this notice with your payment. Keep the original notice for your records.



STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

LEGAL DEPARTMENT, APPEALS DIVISION (MIC:85)
450 N STREET, SACRAMENTO, CALIFORNIA
PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-0085
916-323-4245 • FAX 916-324-2618
www.boe.ca.gov

SEN. GEORGE RUNNER (RET.)
First District, Lancaster

FIONA MA, CPA
Second District, San Francisco

JEROME E. HORTON
Third District, Los Angeles County

DIANE L. HARKEY
Fourth District, Orange County

BETTY T. YEE
State Controller

CYNTHIA BRIDGES
Executive Director

February 24, 2015



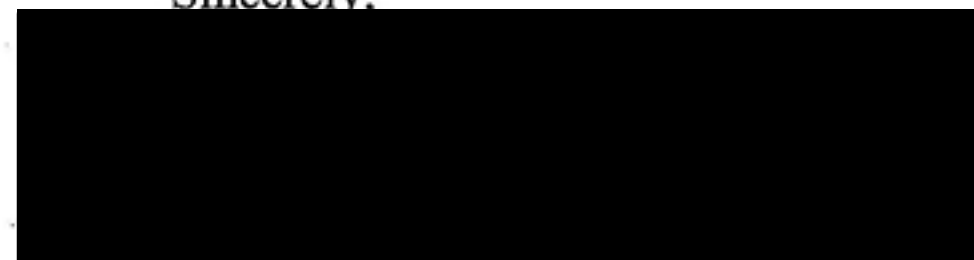
Re: [REDACTED] 58
Case ID's [REDACTED]

Dear Sir/Madam:

Enclosed is a copy of our Decision and Recommendation (D&R) in the above-referenced appeal. We recommend that the appeal be granted.

Our recommendation is not yet final. Unless we issue a Supplemental D&R to clarify or correct the D&R, your appeal will be processed in accordance with the D&R and official notice of the Board's action will be mailed to you.

Sincerely,



Appeals Conference Auditor

DRK:rdw
Enclosure

cc:



McClellan Davis, LLC
Attention: Mr. Jesse W. McClellan
508 Gibson Drive, Suite 120
Roseville, CA 95678-5797

Chief, Headquarters Operations Division (MIC:49) *(file attached)*
Glendale District Administrator (AC)
Culver City District Administrator (AS)
Board Proceedings Division (MIC:80)

1 loss statements for years 2005, 2006 and 2007. The Department added the total recorded sales from
2 these profit and loss statements and compared the result to the gross receipts on the FITR's. The
3 Department found that the FITR's only included sales for [REDACTED]. As there was a difference, the
4 Department believes that petitioner should have known that its sales were not being reported correctly
5 on the FITR's, which the Department considered an indication of fraud. As previously stated, the
6 bookkeepers for each location were responsible for keeping the records for the individual restaurants.
7 As such, it is reasonable that petitioner was unaware that the totals from the profit and loss statements
8 for both businesses did not match the gross receipts on the FITR's for [REDACTED]. Thus, we find that
9 petitioner did not intentionally omit sales from [REDACTED] on the FITR's. We find that this further
10 supports that petitioner did not intend to evade the tax.

11 In summary, we believe that the percentage of error computed in exhibit 2 is not sufficient to
12 establish fraud. We find that petitioner's actions do not show intent to evade the tax. Thus, it is our
13 recommendation that the fraud penalty be deleted. Also, absent a finding of fraud, the determination is
14 not timely for any of the periods included in the audit because the Department did not obtain a waiver
15 of the otherwise applicable three-year statute of limitations. Thus, in conjunction with our
16 recommendation to delete the fraud penalty, we also recommend that the tax portion of the
17 determination be deleted.

18 Recommendation

19 We recommend that the determination be deleted. We also recommend that the claim for
20 refund be granted for the payments made towards this liability.

21 [REDACTED]
22 [REDACTED]
23 [REDACTED] Appeals Conference Auditor

February 24, 2015
Date

24 Attachments: Exhibits 1 - 2
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